

EXHIBIT B

**DECLARATION OF CHARLES M. MARSTELLER IN SUPPORT OF
DEFENDANTS' OPPOSITION TO MOTION FOR PRELIMINARY
INJUNCTION**

TO: S.F.Ethics Commission
FROM: Charles Marsteller, SF Common Cause
DATE: 05.04.00
RE: Revision of the C.F.R.O., November 2000 Ballot

There are three mechanisms we can use to preserve the integrity of the S.F.Campaign Finance Reform Act ('S.F.CFRO').

1. effective disclosure
2. partial public financing
3. reasonable limits, both for contributions and expenditures

None of these things individually will achieve the effective reforms required in the settlement of the SFSG and Reilly cases.

Disclosure: There are at least three mechanisms used to circumvent disclosure requirements (see attached):

1. the 'County' vs. 'City' distinction used by some committees in 1999;
2. Section 527 'non-profit' provisions in the IRS Code in 2000;
3. 501(c)(3) 'non-profit' provisions in the IRS Code in 1998.

Public Financing: Establishes a 'floor' to guarantee free speech but does not satisfactorily address or solve the problem of high spending by independent committees.

Limits: Unless universally applied (to controlled and independent committees), limits on candidates are not fair.

True campaign finance reform requires the utilization of all three mechanisms to be truly effective.

I would urge the Commission expand the scope of the legislation which it submitted to the S.F.BOS to include:

1. disclosure enhancements and 'loophole' closures
 - a. any committee (state or local) conducting political activity in San Francisco should be report and fully disclosed;
 - b. all 500 series IRS organizations conducting political activity should be subject to disclosure
2. partial public financing
3. reapplication of contribution limits on independent expenditure committees pursuant to the principals established in Nixon v. Shrink Missouri to address the public's concerns regarding any appearance of corruption:
 - a. compile a record
 - b. issue findings
 - c. impose reasonable contribution limits

A final note: as of this date, the above reflects my views as a member of San Francisco Common Cause but does not necessarily reflect the views of the San Francisco Board.

SFE Exam 04.02.00

-CO EXAMINER

A member of the San Francisco Superior Legislature and Chamber

More independent groups funding political ad attacks

Donors anonymous under IRS loophole

By Todd S. Purdum

AP Wire Staff

LOS ANGELES — George Gorton is hardly a political novice.

For 30 years, since he was a college student supporting James L. Buckley's campaign for the U.S. Senate from New York, he has worked for candidates from Richard Nixon to Pete Wilson to Boris Yeltsin. But even he had not thought much about Section 527 of the Internal Revenue Code — at least not until last year.

"I was walking around complaining to everybody that I could find about the amount of money that organized labor was spending on issue advocacy," said Gorton, who cut his political teeth in 1972 as national college coordinator for Nixon's Committee for the Re-election of the President. "And somebody said to me, 'George, that's their First Amendment right.' And I decided labor wasn't wrong to do it; they were right to do it. And so I decided pro-business people should do it, too."

So Gorton, who runs a Republican consulting business based in San Diego, started Shape the Debate, a nonprofit political organization that, under Section 527, can raise and spend unlimited amounts of money, with no disclosure requirements for donors, as long as it does not expressly advocate the election or defeat of any candidate.

Its inaugural television advertisement, which began airing last week in California and New York, accuses Vice President Al Gore of political hypocrisy, in a mock game show in which contestants answer questions on various topics, including Gore's support for campaign finance overhaul despite his appearance at an illegal fund-raiser at a Buddhist temple.

Conservative credo

"Shape the Debate strongly believes that free enterprise and con-

servative ideas are more likely to become public policy when candidates and public officials honestly and publicly discuss their positions on them," according to the group's credo, which can be found on its Web site, shapethedebate.com.

"Shape the Debate will therefore use stinging ads of rebuke, where appropriate, or gentle praise to remind leading candidates and public officials to honestly discuss our issues, as a means to keep conservative and free enterprise issues uppermost in the minds of the American public."

The group is among the latest entrants in a growing field of independent campaign expenditure efforts, spurred on by recent court rulings interpreting the tax law. Its literature emphasizes that contributions are not a matter of public record, and Gorton said that was an appealing point for donors, most of them Republicans and many of them Californians who supported Wilson's past campaigns for governor and senator.

So far the group has raised about \$1.5 million, in chunks of multiple thousands of dollars. Gorton hopes to raise another \$3 million to \$5 million for advertising campaigns this year.

"In the atmosphere that's been created by the Clinton-Gore administration, where the secret FBI files of Republican appointees turned up in White House hands, you have to wonder about retribution," he said. "The heart of the First Amendment is that you can criticize your government without fear of retribution."

Wilson has helped raise money for the group. As governor, he tangled repeatedly with public employee unions that undertook campaigns opposing his policies, and former Wilson aides say they see the latest effort as a way of evening the score a bit.

TV ads 'shape the debate'

"Television is what really does shape the debate," said Wilson, who since last fall has been working for Pacific Capital, an invest-

ment banking concern in Beverly Hills. "The candidates certainly have that obligation, and sometimes they fulfill it and sometimes they don't. But the fact is, there are very definite limits on what they can reasonably expect to raise through their own efforts. Arguably, Bob Dole in 1996 was dead before he ever got to the convention in San Diego, because of the tremendous pummeling he took in the interim in independent expenditures directed against him."

Wilson added, "I think what you've got now is a situation in which most of the spending on television on both sides is going to be financed by independent groups and not the candidates themselves."

State and national Democratic officials swiftly denounced Shape the Debate's efforts as "underground financing" waged by "George W. Bush's ally," in the words of a Democratic National Committee news release.

In fact, Wilson's former aides say, he has never had particularly warm relations with Bush and has regarded the Texas governor as a rival. When Wilson decided last year not to pursue his own presidential campaign, and Bush telephoned to wish him well, at least one senior Wilson aide urged him not even to return the call.

Wilson remains controversial in California, where his strong stands against affirmative action and illegal immigration provoked a backlash. Bush has not generally tapped the network of old Wilson advisors in his campaign here, and Gorton said he did not believe the two men had talked in months.

"I think Perot's trying to find a way that George Bush will give him a call," said former state Sen. Art Torres, the chairman of the California Democratic Party, using his party's derisive nickname for Wilson. "The problem is, he's now created even more of a fire wall, because of the sensitivity he's created with this ad. They have no sense of subtlety and they never did."

Disclosure circumvention (to date)
1. 501(c)(3)
2. Section 527, IRS Tax Code (attached)
3. City vs. County distinction